

SURREY COUNTY COUNCIL**LOCAL COMMITTEE (WAVERLEY)****DATE: 12 DECEMBER 2014****LEAD OFFICER: KEVIN ORLEDGE
STREET WORKS MANAGER****SUBJECT: SOUTH EAST PERMIT SCHEME: UPDATE****DIVISION: ALL DIVISIONS IN WAVERLEY****SUMMARY OF ISSUE:**

The report updates the Committee on the first twelve months of operation of the South East Permit Scheme to control street works and works for road purposes on the highway network.

On 11 November 2013 Surrey County Council became a Permit Authority with the introduction of a permit scheme to manage the highway network with respect to both street works and works for road purposes. Under the scheme works promoters are required to request permission from the Permit Authority before they can undertake works on the highway. Prior to the introduction of the scheme works promoters had only to inform the authority of their intention to work.

A permit scheme was introduced into Surrey in the form of the South East Permit Scheme (SEPS) with the objective of creating a better managed highway network in terms of safety, disruption and asset protection.

This report provides an overview of the permit scheme within Surrey, the implications to both works promoters and the highway authority and provides information gained from the first twelve months of operation.

RECOMMENDATIONS:

The Local Committee (Waverley) is asked to note the report.

REASONS FOR RECOMMENDATIONS:

The Committee had requested an update on the operation of the scheme.

UPDATE ON THE SCHEME

- 1.1 Road works are inevitable. Under respective enabling Acts, utility companies have statutory rights and obligations. These include a duty to provide a service or supply to customers and rights to place, maintain, repair and renew, etc., apparatus. Targets are set by industry regulators in relation to

reconnection times in the case of failure of supply and apparatus maintenance and replacement.

The highway authority will carry out maintenance works to support the performance of the highway and improvement works to enhance safety, cope with increasing traffic demands and to meet customer expectations.

Activities are controlled by two prime pieces of legislation, the New Roads and Street Works Act 1991 (NRSWA) and the Traffic Management Act 2004 (TMA).

Under section 59 of NRSWA 1991 there is a duty for the local street authority (Surrey County Council) to coordinate all types of work on the highway and under section 16 of the TMA 2004 to manage the road network with a view to achieving, so far as may be reasonably practicable, the expeditious movement of traffic on the road network.

- 1.2 Under powers available in the TMA 2004 (enacted 2008) Surrey County Council introduced the South East Permit Scheme to manage registerable activities on the highway.

The permit scheme cannot reduce the overall volume of highway activities. However, with fees able to be charged for granted permits, the income generated from the scheme supports staff resource levels to allow all applications for work to be analysed, giving increased opportunity for better coordination of activities.

Also, with direct funding from permit fee income, resource has also been increased in field officers inspecting and monitoring activities in progress and after completion. (**Appendix 8**)

- 1.3 A central requirement of operating a permit scheme is applying parity between works by utility companies and Surrey's own works (Works for Road Purposes – WRP). This has been a challenging concept to introduce internally and work continues to improve this process.

- 1.4 Permit applications can be either granted or refused. In April 2014 an additional option of a Permit Modification Request (PMR) was introduced. This allows applications to be returned to the requester with comments defining the circumstances under which the permit would be granted and removes the need to refuse permits where in principle works can go ahead but amendments, usually relating to timing, are required on the application.

If permit applications are not responded to within Department for Transport (DfT) defined timescales, they become "deemed", i.e. agreed by default. No fee can be charged for a permit application that becomes deemed. The Street Works department have a 0% target for deemed permits.

If a PMR is not responded to by a works promoter in the required timescale the Permit will automatically default to refused. (**Appendix 3**).

- 1.5 Conditions can be applied by the authority to the activity contained within the permit. Under statute conditions must be pertinent to the reduction of congestion and disruption, recognise the needs of other users of the highway and the integrity of the highway itself.

Non-compliance with a permit condition is a criminal offence which may be prosecuted via the Magistrates' Court. Liability for the offence can be discharged by payment of a Fixed Penalty Notice (FPN). Charges for FPNs are set at £120 per offence with a reduction to £80 if paid in the first 29 days.

As of 1 October 2014 DfT figures indicated that 63 Local Authorities were operating permit schemes in the UK with a further 22 awaiting ministerial approval. With many of these schemes operating differing sets of permit conditions a DfT aim exists to standardise this situation, with a national conditions document being produced.

Whilst currently under no present legal obligation to do so, the adoption of this national document for Surrey County Council is currently being reviewed.

- 1.6 The South East Permit Scheme was implemented by both originating member authorities, Surrey and East Sussex, on 11 November 2013. Being classed as a Common Scheme it is open for other authorities to join with the objective of standardising local authority approach to street works in the South East of England.

Bracknell Forest Council started operation of SEPS on 5 November 2014 and Slough, Wokingham and West Berkshire District Councils will become scheme members in the New Year.

To ensure consistent application of SEPS across member authorities a governance committee has been created with each authority being represented along with representation from each industry strand (Gas, Water, Electric and Telecoms).

- 1.7 With robust guidance issued by the DfT, SEPS is targeted towards the traffic sensitive highway network, Permit fees are structured accordingly.

Maximum fees for permits are set by the DfT. Fees applied by individual authorities are calculated using a DfT supplied matrix calculator with input data that includes the amount of works, type of works, type of road, and staffing levels. Fees for Surrey County Council SEPS are shown in **Appendix 2**.

It can be reported that income is generally in line with pre-operation predictions and is shown in **Appendix 5**.

In line with the guidance relating to the traffic sensitive network and the overall raison d'être of the scheme to reduce traffic disruption, the DfT has issued instruction for all permit authorities to incentivise works to take place wholly outside of traffic sensitive periods by offering a discount on the permit fee charged for these works.

Members of the South East Permit Scheme have agreed to offer a 30% discount on permit fees where appropriate conditions are met. A date for the introduction of this discount in Surrey has yet to be agreed.

- 1.8 Working without a permit is a criminal offence. A ruling however has been given in Magistrates' Court that the legislation was "clearly directed at those

www.surreycc.gov.uk/waverley

who ignore the scheme completely by failing to secure a permit at all". This ruling also stated that an offence discharged by payment of an FPN is not a continuing offence. Advice from the legal team at Surrey County Council is that Magistrates Court decisions do not create precedent *per se*, but, as judicial determinations, may be taken into account in similar cases

The effect of these rulings is that multiple FPNs cannot be issued for the same offence, even though it may continue, and only when flagrantly abused can a working without a permit FPN be issued.

- 1.9 Highway improvements associated with new developments (as deemed necessary by Transportation Development Planning (TDP) and included in planning permissions), under the permit scheme require an approved permit before they can be undertaken.

Permit conditions can be applied and greater control now exists over timing, duration and methodology of this type of works.

- 1.10 Case studies can be found in **Appendix 7 (to follow)**.

Contact Officer:

Kevin Orledge (Street Works Manager)
kevin.orledge@surreycc.gov.uk / 0300 200 1003

Consulted:

N/A

Annexes:

- Appendix 1:** Definition of terms
- Appendix 2:** Charges for permits
- Appendix 3:** Granted permits
- Appendix 4:** Deemed/refused/PMR permits
- Appendix 5:** Income – permit fees
- Appendix 6:** Income – Fixed Penalty Notices
- Appendix 7:** Case studies
- Appendix 8:** Inspections

Sources/background papers: None